



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 20-03020
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

12/01/2022

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated financial considerations concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

Statement of the Case

On December 16, 2020, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Central Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether eligibility for granting a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DoD Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR (undated), and requested a hearing. This case was assigned to me on February 25, 2022. A hearing was scheduled for April 27, 2022, via TEAMS teleconference services, and was heard on the scheduled date. At the hearing, the Government's case consisted of ten exhibits. (GEs 1-10) Applicant relied on one witness (himself) and 24 exhibits (AEs A-X). The transcript (Tr.) was received on May 5, 2022.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with missing financial documents. For good cause shown, Applicant was granted 30 calendar days to supplement the record with any missing or mislabeled documents and additional documentation covering Applicant's SOR-listed delinquent debts. Within the time permitted the parties placed the Applicant's received documents in properly labeled and collated order, and Applicant supplemented the record with supporting documentation addressing his covered delinquent debts.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated seven delinquent debts exceeding \$74,000. Allegedly, these debts remain unresolved and outstanding.

In his response to the SOR, Applicant admitted each of the allegations with explanations and clarifications. He claimed his income stream declined considerably between 2019 and the first quarter of 2020 after COVID hit and "ground his business (aerospace) to a halt," and severely limited his ability to pay his monthly expenses and address his debts. With a substantially reduced salary, he encountered difficulties meeting his household expenses and addressing his debts as well. He claimed that each of the accounts covered in the SOR remains delinquent.

Findings of Fact

Applicant is a 61-year-old engineering consultant of a defense contractor who seeks a security clearance. Admitted facts are adopted and incorporated by reference. Additional findings of fact follow.

Background

Applicant married in August 1984 and divorced in July 2009. (GEs 1-2) He has two children and one stepchild from this marriage. He remarried in August 2009 and divorced in May 2020. (GEs 1-2 and AEs A-C, T-U, and X; Tr. 41-42 and 48) He earned a bachelor's degree in electrical engineering in August 1982 and a master's degree in December 1995. (GEs 1-3) Applicant reported no military service.

Since September 2021, Applicant has been continuously employed by his current employer as a subject matter expert in the engineering field. (AE V; Tr. 62) Between April 2021 and September 2021 he was employed by another defense contractor. (Tr. 62-63) From September 2015 to February 2021, he was self-employed as an owner and president of a defense contracting firm that provided engineering technical services to companies in the defense aerospace market. (GEs 1-2; Tr. 55-56) Previously, he was employed by other employers between March 2008 and September 2015. (GEs 1-2; Tr. 54-55) He has held a security clearance since June 1988.

Applicant's finances

Between 2019 and 2020, Applicant accumulated a number of delinquent accounts, seven in all exceeding \$74,000. (GEs 7-10 and AE V) His SOR-listed debts are comprised of the following: SOR ¶¶ 1.a (for \$725); 1.b (for \$467), 1.c (for \$1,793); 1.d (for \$1,208); 1.e (for \$2,534); 1.f (for \$68,175); and 1.g (for \$1,888). (GEs 1-10) His debts were accumulated during a difficult financial stretch of his personal business. Compounding his business losses were his wife's appropriation of his personal and business accounts prior to filing for divorce. (GE 6 and AE X; Tr.56-58) Upon running out of cash to operate his business following his loss of a DoD contract despite investing over \$600,000 into saving the contract, he closed it in February 2021. (Tr. 58-61, 65-68) Applicant's accumulated debts represent both business and personal setbacks in income flows from his business and personal finances. (AE C; Tr. 56-61)

In March 2022, Applicant and his wife sold their home. (Tr. 54-55). Until recently, he has been unable to reach any of the proceeds to address his debts due to holds placed on the sale proceeds by several of his creditors. (Tr. 43-44, 51) Proceeds of sale potentially available to him from the escrow total approximately \$115,000. (AE R; 44-45. 117-118) Once the sale proceeds were released to him, he assured he could pay his SOR debts (totaling \$74,000). (Tr. 46) Some of these listed debts are business-related debts associated with his start-up company; while some of the debts are personal debts owned by Applicant individually. (Tr. 50-51, 67) Mediation proceedings initiated in August 2021 between Applicant and his wife over rights to the escrowed sale proceeds remained pending as of the date of the hearing. (AE D)

Since the hearing, Applicant has addressed his SOR-listed debt delinquencies with documented payoffs and a well-documented dispute with an airport authority allegedly responsible for his airport-incurred injuries associated with his \$725 medical debt covered by SOR ¶ 1.a. (AEs AA-BB) His post-hearing submissions document his resolution of his SOR 1.b debt with a payoff of \$3,682 (AE CC). Debts covered by SOR ¶¶ 1.c and 1.d were resolved by respective payments in full of the account balances outstanding with the creditors. (AEs DD and EE) Applicant was able to work out payment settlements with SOR creditors 1.e (AEs FF and II-JJ) and 1.f (GG) for reduced amounts. And, he was able to resolve his delinquent SOR ¶ 1.g debt with a full payoff of the account. (AE HH)

Additionally, Applicant documented his bringing his student loan and other non-SOR accounts current and settling other non-SOR accounts. (GEs 8-10 and AEs LL-NN). Applicant's previously unresolved debts with his since-closed business were successfully resolved by settled payouts. (AEs II-LL) And, he has an installment agreement in place with the Internal Revenue Service (IRS) to cover back taxes due for tax period 2009 and itemized in the Federal tax lien of February 11, 2013. (GEs 3-5 and AEs L-M)

Applicant earns \$225,000 a year from his present job. After covering his monthly expenses, he has little discretionary funds at his disposal. (AE B; Tr. 115-116) He has accumulated about \$14,000 in the 401(k) he established with his new employer and hopes to add to his retirement account. (Tr. 112-113)

Endorsements

Applicant is well regarded by his colleagues (past and present) who have worked closely with him. (AEs A, E, N, P, S, and X; Tr. 38) Each of his colleagues credits him with trusted financial responsibility with his business and personal accounts.

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, "the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. Eligibility for access to classified information may only be granted "upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Financial Considerations

The Concern: Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules or regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified

information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s accumulation of delinquent accounts between 2019 and 2020 as the result of incurred heavy business and personal losses. Applicant assumed personal responsibility for both his business and personally incurred debts.

Financial concerns

Credit reports reveal that Applicant’s three reported delinquent debts remain unaddressed and unresolved. These debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; and 19(c), “a history of not meeting financial obligation.” Each of these DCs apply to Applicant’s situation.

Applicant’s admitted individual debts require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006). His admitted debts are fully documented and create judgment issues as well over the management of his finances. See ISCR Case No. 03-01059 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified information. While the principal concern of a security clearance holder's demonstrated difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving delinquent debts.

Historically, the timing of addressing and resolving debt delinquencies are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's cited business losses and personal setbacks associated with his divorce are extenuating and warrant application of several mitigating conditions (MCs). MC 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances" is fully available to Applicant.

Available to Applicant as well are MC ¶¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts"; and 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." Applicant has documented both his good-faith payment initiatives and the basis of his dispute of the medical debt associated with his airport incident.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through the voluntary payment of accrued debts. See ISCR Case No. 19-02593 at 4-5 (App. Bd. Oct. 18, 2021); ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 20, 2020). Promises to address delinquent debts in the future when circumstances permit are no substitute for a proven track record of payments. With his post-hearing payment documentation, Applicant has materially addressed these track record requirements.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his finances are fully compatible with minimum standards for holding a clearance. Taking into account Applicant's credited defense contributions and cited extenuating circumstances, good-faith payment initiatives, and his well-documented dispute of the medical debt associated with his airport incident, sufficient evidence has been presented to enable him to safely maintain sufficient control of his finances to meet minimum standards for holding a security clearance.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Guideline F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparagraphs 1.a through 1.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Roger C. Wesley
Administrative Judge